



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
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DIVISION

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No Third party contact

Dear ***** :

This is in response to your letter requesting information concerning appropriate activities for a hospital auxiliary described in section 501(c)(3) of the Internal Revenue Code. In your letter, you indicate that the auxiliary previously supported a tax-exempt hospital which was sold. The hospital now operates as a for-profit enterprise. You are seeking guidance as to whether the auxiliary can appropriately engage in any activities involving the for-profit hospital.

Section 501(c)(3) of the Code provides exemption from federal income tax for organizations organized and operated exclusively for charitable purposes. Charitable purposes which are often undertaken by a hospital auxiliary include promoting the health of the community, providing relief to the poor and distressed, advancing education, and promoting scientific research.

In accomplishing its exempt purposes, a hospital auxiliary can undertake activities that may incidentally benefit a for-profit hospital so long as no substantial part of its activities furthers that nonexempt purpose. See section 1.501(c)(3)-1(c)(2) of the Income Tax Regulations. The requirement is that the organization's activities must serve a public interest and not unduly benefit the private interests of the for-profit hospital. See section 1.501(c)(3)-1(d)(2)(ii) of the regulations.

The following examples illustrate how the Service would use these principles in analyzing the effect of various activities that might be undertaken by an exempt hospital auxiliary in the circumstances you described. All of the examples assume that the for-profit hospital does not control the exempt auxiliary or otherwise exercise any significant control over the auxiliary's operations. In each case, whether the activities are compatible with the auxiliary's exempt status depends on whether the public benefit to the community as a whole outweighs any incidental benefits that might be conferred on the for-profit hospital.

Solicitation of Funds

Some transactions between a for-profit hospital and an exempt auxiliary involve fund transfers from the hospital to the auxiliary without consideration. Being a contributor to the auxiliary may enhance the for-profit hospital's public image. However, such intangible or conjectural benefits to the hospital are insignificant in comparison to the public benefit the exempt auxiliary can achieve with the contributed funds. Thus, the mere fact that the contributor is a proprietary hospital does not jeopardize the auxiliary's exempt status.

Grants for Community Education

Fund transfers from the auxiliary to the hospital may also further the auxiliary's exempt purposes. However, in such a case the auxiliary must retain control and discretion over the grant funds to assure that they are used for the exempt organization's purposes. See Rev. Rul. 68-489, 1968-2 C.B. 210. Thus, an auxiliary could make grants to a for-profit hospital to enable the hospital to provide a free educational program such as lectures on health related topics to the community. The auxiliary should maintain records to show that the activities financed by the grant furthered exempt purposes even though the activities were conducted by the for-profit hospital.

Grants to Support Scientific Research

Another example of a permissible grant from an auxiliary to a proprietary hospital is funding a scientific research project on health related matters such as finding a treatment or cure for a disease. Qualified personnel associated with the for-profit hospital may conduct the research utilizing the for-profit hospital's patient base to obtain research subjects. The fact that both the researchers and the research subjects are associated with the for-profit hospital does not detract from the scientific nature of the research or confer any

significant private benefit on the for-profit hospital. Therefore, the grant would not jeopardize the auxiliary's exempt status.

Activities Benefiting Hospital Patients

Patients of a proprietary hospital may also be aided by an auxiliary directly. In Rev.

Rul. 68-73, 1968-1 C.B. 251, an organization provided volunteers to read and visit with patients, write letters for them, and perform similar personal services. While there may have been some benefit to the proprietary hospital in the form of increased patient satisfaction, this possible private benefit was inconsequential in comparison to the public benefit of promoting the wellbeing of persons who were ill. Therefore, the organization was entitled to exemption under section 501(c)(3).

Similarly, in Rev. Rul. 79-358, 1979-2 C.B. 225, an organization provided funds to a hospital to pay for the increased cost of a private room for patients who could medically benefit from such a room but who could not otherwise afford the cost of such a room. The hospital benefited because it received the increased private room fee. But, the benefit to the hospital was incidental to accomplishing the exempt purpose of aiding the patient's recovery.

Providing Goods and Services to the Public

The wellbeing of hospital patients, including those in a proprietary hospital, may be promoted by operation of a hospital gift shop. See Rev. Rul. 69-267, 1969-1 C.B. 160. This is true because the presence of visitors and the receipt of gifts from them has a positive emotional impact on the patients. Even though some minor patronage of the gift shop may be attributable to convenience purchases by hospital employees which do not benefit the patients, the overriding public benefit to the patients outweighs the private benefit to the hospital and its employees.

At the other end of this spectrum are activities that predominantly benefit someone other than the hospital patients. In this category are cafeterias and parking garages that are predominantly used by visitors, employees, and physicians. The patients have virtually no need for these services since they are already receiving their meals and do not generally have their cars with them during a hospital stay. Therefore, the operation of a cafeteria or a parking garage serving nonpatients of a proprietary hospital would be problematic even though the auxiliary might have other activities that were consistent with its exempt status.

Similarly, purchasing goods, services, or facilities for a for-profit hospital would also be problematic because of the direct and substantial private benefit to the proprietary hospital.

Requesting a Private Letter Ruling

As the above examples illustrate, these issues are analyzed in terms of all the relevant facts and circumstances and situations often arise in gray areas not covered by revenue rulings or other precedent. In such a case, an organization may request a private letter ruling from the Internal Revenue Service as to whether a particular proposed activity will jeopardize its tax-exempt status. The procedures for requesting a private letter ruling are explained in Rev. Rul. 2002-4, 2001 I.R.B. 127, as updated annually.

In accordance with section 3.06 of Rev. Rul. 2002-4, the information provided in this letter is advisory only.

If you have any questions about this letter, please contact me at (202) 283-9461. My

Sincerely,

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Technical Group 1